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SUMMARY RECORD OF THE 3rd MEETING

Chairman: Mr. LAMPTEY (Ghana)

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The meeting was called to order at 3.35 p.m.

ELECTION OF VICE-CHAIRMEN AND RAPPORTEUR

1. The CHAIRMAN said that consultations on filling the posts of Vice-Chairmen and Rapporteur were in progress and urged those concerned to reach agreement quickly. He suggested that the election should be postponed until the following meeting.

2. It was so decided.

ORGANIZATION OF WORK (A/C.6/49/1; A/C.6/49/L.1)

3. The CHAIRMAN said that the Secretariat's note on the organization of work was contained in document A/C.6/49/L.1. Section II of that note listed the documentation relating to the items allocated to the Sixth Committee, with their titles, symbols and projected dates of issuance. Paragraph 6 of section III contained the tentative agreement on the timetable of work concluded in the framework of the consultations organized by the Legal Counsel, and paragraph 7 contained the suggestion of the Secretariat concerning an additional agenda item referred to the Sixth Committee, namely, item 157, "Question of criteria for the granting of observer status in the General Assembly".

4. Ms. WILLSON (United States of America) said that, since the new item had been added after the consultations on the programme of work, it might be necessary to make some adjustments in order to allot sufficient time to that item. She suggested that a first meeting should be devoted to a discussion of the type of work to be conducted in the Committee, followed by three meetings of informal consultations in which to work out the criteria, a task that should as far as possible be completed at the current session. Lastly, two meetings in early November should be set aside for a short discussion of the work completed.

5. Mr. CHATURVEDI (India) supported the United States suggestions and noted the necessity of making sure that none of the formal or informal meetings conflicted in the new timetable.

6. Ms. CARYANIDES (Australia) also supported the United States suggestions but observed that it would nevertheless be necessary to set aside more time than had been indicated by the United States representative.

7. The CHAIRMAN said he took it that the Committee approved the proposed timetable on the understanding that it would be applied with the necessary flexibility according to the progress of the work.

8. It was so decided.

9. The CHAIRMAN drew the Committee's attention to section IV of the Secretariat's note regarding the establishment of working groups and holding of consultations. He added that, with respect to item 136 (United Nations Decade

of International Law), the General Assembly, in its resolution 48/30, had requested the Working Group on the United Nations Decade of International Law to continue its work during the forty-ninth session, in accordance with its mandate and methods of work. Consultations continued regarding the election of the Chairman of the Working Group. The chairmen of the working groups would later be required to determine the schedule of meetings of their respective groups, in consultation with the Bureau of the Sixth Committee.

10. Concerning agenda item 141 (Question of responsibility for attacks on United Nations and associated personnel and measures to ensure that those responsible for such attacks are brought to justice), the General Assembly, by resolution 48/37, recommended that a working group should be re-established in the framework of the Sixth Committee at its forty-ninth session in the event that further work was required for the elaboration of the draft convention. The Ad Hoc Committee had itself, in paragraph 29 of its report as contained in document A/49/22, recommended that the Working Group should meet for a two-week period, preferably in October or November. He took it that the Committee endorsed the tentative agreement arrived at during the informal consultations that the Working Group should meet during the period 3 to 14 October.

11. It was so decided.

12. The CHAIRMAN said he took it that the Committee wished to elect Mr. Philippe Kirsch of Canada as Chairman of the Working Group on the elaboration of a convention on the safety and security of United Nations and associated personnel.

13. It was so decided.

14. The CHAIRMAN recalled that, with respect to agenda item 143 (Convention on jurisdictional immunities of States and their property), the General Assembly had decided that consultations should be held in the framework of the Sixth Committee during one week at the beginning of its forty-ninth session, namely, from 26 to 30 September 1994. There was general agreement to elect as Chairman of the consultations Mr. Carlos Calero-Rodrigues of Brazil, who had fulfilled that function for the two previous years. He took it that the Committee wished to elect Mr. Calero-Rodrigues to that post.

15. It was so decided.

AGENDA ITEM 138: REPORT OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW ON THE WORK OF ITS TWENTY-SEVENTH SESSION (A/49/17; A/49/427)

16. Mr. MORÁN BOVIO (Chairman of the United Nations Commission on International Trade Law (UNCITRAL)), introducing the item, recalled that during its twenty-sixth session in 1993, the Commission had adopted the UNCITRAL Model Law on Procurement of Goods and Construction, whose formulation had been entrusted to the Working Group on the New International Economic Order. The Commission had earlier decided to postpone preparation of that Model Law mainly because of the different considerations governing the procurement of goods and construction, on

the one hand, and the procurement of services on the other. Nevertheless, given that many States lacked laws regarding the procurement of services, or that such laws, where they existed, were not sufficiently applicable, UNCITRAL, in lieu of preparing a separate Model Law dealing only with services, decided that it would be better to formulate the pertinent provisions within the Model Law on the Procurement of Goods and Construction, in a consolidated text dealing with the procurement of goods and construction, and, in a separate chapter, the procurement of services. Those States wishing to limit themselves to the previous subject could continue using the Model Law.

17. The main difference between the procurement of goods or construction and the procurement of services was that, in the former, the predominant evaluation criterion was price, while in the latter it was the professional competence and ability of the service provider. That difference was provided for in the Model Law, which, in the case of services, enabled the procuring entity to give greater prominence to the competence and abilities of the service provider, while maintaining the objectives of economy and efficiency and respecting fairness and competitiveness in the procurement process.

18. The work of UNCITRAL in the area of procurement had increased in importance as the project progressed, owing, firstly, to the decrease in recent years of available funds for public expenditure, which necessitated greater efficiency in the management of public funds; and, secondly to recent reforms in political and economic structures in many States, particularly the countries of Eastern Europe, whose economies were in transition, which had led to considerable changes in legal procedures in the area of public procurement. The Model Law had elicited great interest in the context of the general move towards privatization, in which many more Governments were engaging in open, competitive procurement of services. The increased importance of that question was evidenced by the extension of the GATT Agreement on Government Procurement to cover services and also the Directive of the European Union on contracts for procurement of services.

19. As with the previous Model Law, the Commission had adopted a Guide to Enactment of the Model Law which was intended to assist executive branches of government and parliaments to adapt their domestic legislation to the Model Law.

20. In addition to the Model Law, the Commission had also discussed the first draft of the Guidelines for Preparatory Conferences in Arbitral Proceedings as prepared by the Secretariat. The purpose of the Guidelines was to assist practitioners in planning arbitral proceedings. Such planning was necessary because the arbitration rules and laws typically allowed the arbitral tribunal broad discretion and flexibility in the conduct of arbitral proceedings. The absence of such planning was likely to lead to misunderstandings, delays and increased costs of proceedings. One of the important objectives of the Guidelines was to increase predictability and effectiveness of the arbitral process without sacrificing the beneficial flexibility of the process.

21. He then referred to a series of reports of the Working Groups and the Secretariat on various projects currently being undertaken by the Commission.

The latter had received the reports of the Working Group on Electronic Data Interchange regarding the preparation of legal rules on electronic data interchange, had expressed its appreciation for the work accomplished by the Working Group thus far and had expressed the view that the draft set of basic provisions could be completed by the Working Group at its twenty-eighth or twenty-ninth session and submitted to the Commission at its next session.

22. The Commission had also examined the reports of the Working Group on International Contract Practices, especially those on its twentieth and twenty-first sessions, at which the Working Group had continued the preparation of a draft convention on independent guarantees and stand-by letters of credit. The Commission had noted that the Working Group had modified the title of the draft convention to refer to "independent guarantees and stand-by letters of credit" instead of "guaranty letters", had expressed its appreciation to the Working Group, and had requested that, if possible, it should submit the draft convention to the Commission at its twenty-eighth session in 1995.

23. With regard to the system for collection of case-law on UNCITRAL texts (CLOUT), the Commission had noted with appreciation the existence of three editions of the CLOUT abstracts series containing abstracts on 52 court decisions and arbitral awards relating to the United Nations Convention on Contracts for the International Sale of Goods and the UNCITRAL Model Law on International Commercial Arbitration. The conviction had been widely expressed that CLOUT would be beneficial, in particular in promoting the uniform interpretation and application of the statutory texts of UNCITRAL. The Commission had also noted that the Secretariat's work would increase as the number of decisions and awards covered by CLOUT increased; it had therefore requested the Secretariat to ensure that adequate resources were allocated for the effective operation of CLOUT.

24. He recalled that UNCITRAL had reviewed the current status of the legal texts prepared by it.

25. As had been the case in the previous session, the Commission had expressed its concern about the situation that had arisen in the law regarding the transport of goods by sea, as a result of the coexistence of the liability regime of the Hamburg Rules with the International Convention for the Unification of Certain Rules relating to Bills of Lading (Hague Rules). Such mixing of legal regimes increased legal costs, made it difficult for the carrier to assess its liability exposure, complicated settlement negotiations, hindered the use of uniform transport documentation, distorted competition among carriers and resulted in an unequal treatment of the carrier's customers. It had been suggested that the Hamburg Rules should be revised in order to elaborate a regime that would be more widely acceptable. The Commission was of the view that such a course of action was undesirable. There was no convergence of opinion as to the provisions that might be modified or the thrust of any modification. In addition, throughout the preparatory work towards the Hamburg Rules all interest groups had participated in the negotiations and the adopted solutions reflected the well-considered mutual concessions between the groups. It had therefore been suggested that the Hamburg Rules should be adopted broadly

within a short space of time, which would allow the functioning of the system to be monitored and new solutions to be added as a result of developments in practice and new transport techniques. Emphasis had been placed on the need for the Secretary-General to increase efforts to promote wider adherence to the Hamburg Rules, including by disseminating information and in-depth explanations of the benefits that could be drawn by participants.

26. In the area of technical training and assistance, the Commission had noted that, since national seminars were more cost-effective than regional seminars, the Secretariat had continued to emphasize the former.

27. The growing awareness of the UNCITRAL legal texts in many countries, in particular developing and newly independent States, was resulting in increased requests from countries considering adoption of legislation based on UNCITRAL texts. The Secretariat had emphasized that its ability to provide that type of assistance depended on the availability of resources from the UNCITRAL Trust Fund for Symposia, no funds for the travel of participants and lecturers being provided in the regular budget. Those costs must therefore be met by means of contributions to the Trust Fund. In that respect, he noted that a contribution on a multi-year basis had been made by Canada, and that contributions from France and Switzerland had been used for the seminar programme. The Commission had emphasized the need for States to consider making contributions to the Trust Fund so as to enable the Secretariat to meet the increasing demands for training and technical assistance, especially in developing and newly independent States. The Commission had also noted the need to ensure that sufficient human resources would be available for meeting the increasing demand for seminars and technical assistance.

28. As to the future programme of work, he recalled that the Commission had decided to consider the possibility of working on issues regarding legal aspects of receivables financing, cross-border insolvency and build-operate-transfer projects. The Commission had considered those three projects on the basis of reports on possible future work prepared by the Secretariat.

29. Regarding legal aspects of receivables financing, the Commission had expressed its appreciation to the Secretariat for pursuing cooperation with the International Institute for the Unification of Private Law (UNIDROIT), which was preparing a draft convention on security interests in mobile equipment, and with the European Bank for Reconstruction and Development (EBRD), which had prepared a Model Law on Secured Transactions. The Commission had requested the Secretariat to prepare a study that would discuss in more detail the issues that had been identified, possibly accompanied by a first draft of uniform rules. With regard to cross-border insolvency, a Colloquium had been held in Vienna from 17 to 19 April 1994 by the Secretariat, with the cooperation and assistance of INSOL International. On the basis of a current assessment of feasibility and the discussions and consultations which had taken place at the Colloquium, it had been possible to identify a number of sub-areas in which the Commission could work, such as judicial cooperation and access and recognition.

30. Other possible projects might concern the formulation of a set of model legislative provisions on insolvency and the drafting of a model insolvency code. The Commission requested the Secretariat to proceed on that basis, placing particular emphasis at the current stage on the issues of judicial cooperation and of access and recognition.

31. With regard to possible future work in the area of build-operate-transfer (BOT), the Commission noted that the Secretariat continued to monitor the work of the United Nations Industrial Development Organization (UNIDO) on the preparation of "Guidelines for the Development, Negotiating and Contracting of BOT Projects". Particular interest had been expressed in the Secretariat's proposal, once those Guidelines had been finalized, to study the desirability and feasibility of work by the Commission on some of the problems raised in connection with the BOT projects, including, for example, the creation of an enabling statutory framework for BOT projects by supplementing the UNCITRAL Legal Guide on Drawing Up International Contracts for the Construction of Industrial Works.

32. Mr. CALERO RODRIGUES (Brazil) said that once again the report of the Commission provided evidence of UNCITRAL's effective contribution to the development of international trade law. The delegation of Brazil considered that both the draft text of a Model Law on Procurement of Goods, Construction and Services and the draft Guide to Enactment of that Model Law, which had taken the UNCITRAL Secretariat many long hours to prepare, would significantly assist developing and developed countries in enhancing their existing procurement laws and thus contribute to the development of harmonious international economic relations.

33. His delegation also welcomed the draft Guidelines for Preparatory Conferences in Arbitral Proceedings and hoped that the text could be finalized at the next session of the Commission. Comments at the Twelfth International Arbitration Congress, to be held soon in Vienna, would be instructive, especially in determining to what extent the term "preparatory conferences" had been endorsed. In paragraph 117 of the report several alternatives had been proposed, one of which might perhaps be preferable.

34. The Brazilian delegation noted with satisfaction that the Working Group on International Contract Practices had prepared a draft convention on independent guarantees and stand-by letters of credit.

35. Another important subject discussed by the Commission had been the legal issues in electronic data interchange (EDI). His delegation hoped that the Working Group on that subject would continue the discussion of a uniform law on EDI and proceed expeditiously with the preparation of the relevant text.

36. Brazil joined the Commission in noting with appreciation the existence of three editions of the Case-Law on UNCITRAL Texts (CLOUT) abstracts series containing abstracts on 52 court decisions and arbitral awards relating to the United Nations Convention on Contracts for the International Sale of Goods and the UNCITRAL Model Law on International Commercial Arbitration. It also

commended the Secretariat on its cooperation with UNIDROIT and considered very useful the cooperation with the European Bank for Reconstruction and Development, which had made possible the conclusion of a Model Law on Secured Transactions.

37. The Brazilian delegation noted with satisfaction the recommendation made by the Commission on the use in international trade of the revision of the International Chamber of Commerce "Uniform Customs and Practice for Documentary Credits" (UCP 500). It was also pleased that the Secretariat was implementing an active programme of training and assistance in the various fields of international trade law and continuing to place emphasis on national seminars.

38. Mr. MARTENS (Germany) said that the report on the Status of Conventions (A/CN.9/401) gave a factual and sober account of the Commission's work and its international acceptance. The successes of the Commission in the previous five years were attributable to a large degree to the efforts of the Secretariat. Chapter IX of the Commission's report (A/49/17) and document A/CN.9/400 gave a detailed account of the Commission's impressive work in promoting the conventions, model laws and legal guides prepared by UNCITRAL and of the seminars and symposia conducted to promote the dissemination of those texts in the developing countries. He referred particularly to the conference held that month at the Cairo Regional Centre for International Commercial Arbitration.

39. He was pleased to note that, at the 1994 session, the Commission had revised the UNCITRAL Model Law on Procurement of Goods and Construction with the addition of a chapter on services, with the result that the Model Law now encompassed all areas of public procurement - goods, construction and services. He was also gratified that the Secretariat had added a chapter on the procurement of services to the Guide to Enactment of the UNCITRAL Model Law on Procurement of Goods and Construction. He was pleased to note that several countries had introduced changes into their procurement practice, as a result of which their industrial sectors would also have to redefine their position, a significant step towards the creation of a uniform international commercial law. That was renewed proof of the important role played by the Commission in the development and implementation of international commercial law within the international community.

40. The Commission had already embarked on a practical evaluation and analysis of the results of the Congress held in 1992, especially the Guidelines for Preparatory Conferences in Arbitral Proceedings, and hoped that it would be possible in 1995 to adopt the final text, which promised to have a far-reaching impact.

41. The Case-Law on UNCITRAL Texts (CLOUT) would facilitate and guarantee a uniform interpretation and application of the texts prepared by the Commission. It was therefore absolutely imperative that the Secretariat should be in a position to carry out the new tasks created by CLOUT on a permanent basis and without neglecting other essential duties. The necessary funds must be made available for that work, which included the editing, registering, filing and translation of court decisions and arbitral awards.

42. He doubted whether it was appropriate for the Commission to deal with the legal aspects of receivables financing, since that question might overlap with the work of UNIDROIT. In that context, he expressed support for the rationalization of the work of UNCITRAL and felt that the holding of consecutive meetings would not lead to a reduction in costs because member States would have to be represented in the various working groups by different experts.

43. Ms. SAEKI (Japan) said that the Commission's major accomplishments were largely due to its tradition of conducting its work from the legal and technical standpoints.

44. The Commission had completed its work on a draft Model Law on Procurement of Goods, Construction and Services, which she hoped would provide useful guidance for countries in the process of consolidating their procurement legislation.

45. The Working Group on International Contract Practices had made substantial progress on a draft convention on independent guarantees and stand-by letters of credit. In regard to provisional measures and jurisdiction, a flexible approach was the most appropriate, since existing procedural rules in member States would be considerably affected.

46. The decision of the Working Group on Electronic Data Interchange to use the term "model statutory provisions" would enable States to adopt a flexible approach. The delegation of Japan believed that more time and effort were required for the Working Group to complete its work and was therefore doubtful whether it was appropriate to adopt the model provisions at the Commission's twenty-eighth session.

47. In deciding on the future work of the Commission, consideration must be given to the actual need for and the feasibility of tasks to be entrusted to it. The unification of law of business transactions required cooperation among various international organizations, when work should be coordinated by the Commission. It was most important for the special field of competence of each organization to be respected so as to avoid duplication of efforts.

The meeting rose at 4.50 p.m.